

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARTIN SELIG d/b/a MARTIN SELIG
REAL ESTATE,

Plaintiff,

v.

WINSTAR WIRELESS, INC., *et al.*,

Defendants.

Case No. C05-1018L

ORDER GRANTING MOTION
TO VACATE DISMISSAL;
IMPOSING SANCTIONS

I. INTRODUCTION

This matter comes before the Court on plaintiff's motion to vacate the Court's November 29, 2005 order of dismissal in this case. (Dkt. #33). The Court dismissed the case because plaintiff did not file a Joint Status Report or respond in any way to either of two orders to show cause why this case should not be dismissed for failure to comply with the Court's orders.

For the reasons set forth below, the Court vacates the order of dismissal, and imposes sanctions for plaintiff's failure to comply with the Court's orders.

II. DISCUSSION

Plaintiff's counsel, W.K. McInerney, states that he did not receive the orders to

1 show cause or any of the other documents which ultimately led to the dismissal of this
2 case. Declaration of W.K. McInerney (Dkt. #34) at ¶ 3. Mr. McInerney also states that
3 he did not receive any of the messages from the Court's staff who telephoned his office
4 on several occasions regarding the overdue Joint Status Report. Mr. McInerney notes that
5 he was working with temporary secretaries during the relevant time period. However, he
6 acknowledges, correctly, that he is ultimately responsible for complying with the Court's
7 orders. Nevertheless, the Court prefers, whenever possible, to decide matters on their
8 merits. Accordingly, relief from the dismissal order is justified to allow for resolution on
9 the merits. Fed. R. Civ. P. 60(b)(6).

10 The parties have not yet filed a Joint Status Report. The Court orders the parties
11 to file a Joint Status Report no later than January 11, 2006. Once the parties have filed
12 the Joint Status Report, the Court will renote plaintiff's two motions that were pending at
13 the time of the dismissal.¹

14 Finally, the Court considers whether the conduct of plaintiff and his counsel
15 warrants the imposition of sanctions. By not filing a Joint Status Report or a response to
16 either of the Court's orders to show cause, plaintiff failed to comply with three orders of
17 this Court without good cause. The failure is more egregious in light of the fact that the
18 Joint Status Report filing deadline was set by stipulation of the parties, so plaintiff and his
19 counsel were well aware of the deadline but ignored it. Furthermore, plaintiff's counsel
20 has not offered any explanation for his failure to return defendants' counsel's telephone
21 calls and e-mail messages regarding the overdue Joint Status Report. Clearly, plaintiff's
22

23 ¹ Plaintiff's reply "requests a prompt determination" of the two motions.
24 Plaintiff's Reply at p. 2. The motions would have been considered long ago had plaintiff
25 fulfilled his basic, and minimal, obligations as a litigant before this Court.

1 counsel was not actively monitoring the status of this case, and only belatedly learned of
2 the dismissal and related filings when he called the Court's staff to inquire about the
3 status of a pending motion. All of these actions, and inactions, show an on-going cavalier
4 attitude towards the Court's orders, other parties, and the obligations of those seeking
5 relief from and appearing before the Court. The conduct of plaintiff and his counsel has
6 also unnecessary delayed and vexatiously multiplied the proceedings, increased costs, and
7 wasted both the Court's and the defendants' resources. Accordingly, the Court imposes
8 sanctions in the amount of \$2,000, to be paid to defendants within twenty days of the date
9 of this order. Plaintiff and his counsel shall be jointly responsible for paying the
10 sanctions.

11 **III. CONCLUSION**

12 For all of the foregoing reasons, plaintiff's motion to vacate the order of dismissal
13 is GRANTED. The Court's November 29, 2005 order of dismissal (Dkt. #32) is
14 VACATED. The Clerk of the Court is directed to reopen this case.

15 The Court further ORDERS the parties to file a Joint Status Report no later than
16 January 11, 2006. The Court also imposes sanctions in the amount of \$2,000, to be paid
17 to defendants within twenty days of the date of this order. Plaintiff and his counsel shall
18 be jointly responsible for paying the sanctions.

19
20 DATED this 5th day of January, 2006.

21
22 

23 Robert S. Lasnik
24 United States District Judge